

EXHIBIT E

VOL. II

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

10-CR-219S

TONAWANDA COKE CORPORATION
MARK L. KAMHOLZ,

Defendants.

Proceedings held before the

Honorable William M. Skretny, U.S.

Courthouse, 2 Niagara Circle, Buffalo,

New York on February 28, 2013.

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1 once every six days. The T0, the piece of
2 equipment that measured the PM 2.5 was continuous.

3 Q. Did you get some preliminary results back in
4 six months in your study?

5 A. Right. We had some preliminary data, you know,
6 that -- that showed concern for benzene emissions.
7 We were able to -- we had weather stations at --
8 at -- at a couple of these monitoring stations so
9 we can identify when the wind was coming across
10 Tonawanda Coke. And the data showed concern. You
11 know, there was enough there to believe that on an
12 annual basis there may be more emissions than what
13 was reported in the emissions statements from this
14 facility.

15 Q. Okay. So this is sometime in -- when did your
16 full-blown study begin?

17 A. It began in July of 2007 and ended in July
18 of 2008.

19 Q. Okay. So by May of 2008?

20 A. In May we had some preliminary data that gave
21 us this indication. We had a conversation with the
22 RAPCE, Larry Sitzman at the time, and felt it was a
23 good idea to present this data to Tonawanda Coke
24 and see if we can find -- you know, find -- find
25 some of the sources, find some reductions to

1 minimize the emissions.

2 Q. Okay. Now, so in May of 2008 is when your
3 preliminary results came in?

4 A. Correct.

5 Q. And they showed elevated levels of benzene?

6 A. Correct.

7 Q. And at that time, are you testifying that you
8 believed that elevated level of benzene was coming
9 from Tonawanda Coke Corporation?

10 A. Yeah.

11 Q. All right. Now, had you been to the Tonawanda
12 Coke Corporation prior to this?

13 A. No.

14 Q. Before May of 2008?

15 A. No.

16 Q. Okay. And you mentioned there was a discussion
17 between you and Larry Sitzman.

18 A. Yes.

19 Q. What did you guys decide to do?

20 A. We decided to go visit Tonawanda Coke, Mark
21 Kamholz, and show him the data, and -- and discuss
22 it with him.

23 Q. Okay. And you did that?

24 A. And we did that on May 28th, I believe, 2008.

25 Q. So May 28th, 2008, you go --

1 A. Myself, Larry Sitzman, Cheryl Webster, and Gary
2 Foersch met with Mark Kamholz.

3 Q. Okay. And when -- take us through the -- the
4 jury through the process. When you first got to
5 the site, what did you have to do to get in and who
6 did you meet with?

7 A. You go to a guard gate. You announce that
8 you're there to visit Mark Kamholz, and they call
9 Mark and direct you to the -- where to meet him in
10 his -- in the offices.

11 Q. Okay.

12 A. So we met with Mark. You know, I discussed
13 similar to what I just did here for you. I showed
14 him a -- a graph that had particular days where the
15 winds were coming from the southwest across the
16 plant that indicated, you know, benzene levels of
17 concern. And -- and I asked him for some input as
18 to, you know, what he thought may be contributing
19 to this. You know, basically we wanted to have,
20 you know, an opportunity to discuss it with him, so
21 that he could help us find -- find -- find the
22 source of -- if there was one, that -- that was of
23 concern and get reductions.

24 Q. Okay.

25 THE COURT: Before you go on, tap the

1 exhibit in terms of where the gate is and where the
2 offices are.

3 MR. MANGO: In fact, your Honor, if we
4 could zoom in to this portion, that may help us in
5 doing this, your Honor.

6 THE COURT: Okay.

7 THE WITNESS: This is the entrance to
8 Tonawanda Coke. Gate house should be right here.
9 It's hard to see.

10 THE COURT: That's the gate?

11 THE WITNESS: There is a gate here and a
12 gate house with an officer who is at that box.

13 THE COURT: Okay. Where are the offices?

14 THE WITNESS: This is the office here.

15 THE COURT: So you went from the gate area
16 away from the Coke ovens and all that stuff to the
17 offices?

18 THE WITNESS: Correct.

19 THE COURT: Okay.

20 MR. MANGO: So, again, tell the jury how
21 was your interaction with Defendant Kamholz during
22 this -- this meeting in his office?

23 MR. PERSONIUS: Your Honor, I object to
24 that question. How was his interaction? Object to
25 it.

1 THE COURT: To the form, I'll sustain it.

2 Rephrase it.

3 BY MR. MANGO:

4 Q. Describe your interaction with Defendant

5 Kamholz during your meeting in his office.

6 A. Well, I presented the data, like I said, and,
7 you know, basically we were there just to see if we
8 can work together to figure something out to kind
9 of take a look at the by-products plant, you know,
10 together. Hopefully -- you know, hopefully with
11 our input and Mark's, we can see if we can learn
12 something about the facility, about that side of
13 the plant, or -- or the battery to find -- to find
14 reductions. That's all we were after.

15 And, you know, I gave my little speal and Mark
16 was -- is relatively quiet, you know, when I asked
17 him, you know, can you think of anything that
18 contributes to these sources. You know, he had
19 nothing to add. So I asked that, you know, can we
20 take a quick tour of the by-products plant. You
21 know, we couldn't stay very long. We wanted to
22 be -- so we took a tour. He gave us a -- we
23 walked -- I think we may have drove towards the
24 battery and parked in this area here and then
25 walked down the alley between the coke ovens and

1 the by-products area. And I was just basically
2 asking questions about the different sources there
3 to see if we can, you know, identify some benzene
4 emissions.

5 Q. Let's be very clear. You were -- you were
6 telling him you were concerned about benzene?

7 A. Yes.

8 Q. And when you asked him what you just said, do
9 you have any ideas or any suggestions, how did he
10 answer that question?

11 A. He did not have any -- any input. You know,
12 there was no -- no information that I recall that
13 he gave back. It was a shrug of a shoulder or
14 something like that.

15 Q. Okay. So at some point, then, you all leave.
16 Did you -- did you follow him, or did you ride
17 together, if you can recall?

18 A. I don't recall if we drove in separate cars to
19 that spot or if we took a van.

20 Q. Okay. And so now you get into the production
21 facilities here?

22 A. We basically started on the other side of this
23 where this steam plume is. That's the alleyway
24 there that goes between the -- the battery and the
25 by-products plant.

VOL. III

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1 the permit. Is that correct?

2 A. Correct.

3 Q. And an emission source, does it fit with your
4 understanding of the term "source" for the purposes
5 of the New York State permitting -- air permitting
6 requirements, that an emission source is a -- an
7 apparatus or a machine that is capable of causing
8 emission of any air contaminant to the outdoor
9 atmosphere?

10 A. Sounds like the definition right out of the
11 instructions.

12 Q. You also testified, both on direct and
13 cross-examination, regarding this term "emergency
14 relief vent". I want to ask you a couple of quick
15 questions about the use of that term in the New
16 York State regs, but then a follow-up question
17 about its current status.

18 Back in 1984 -- and you were with DEC back in
19 '84, correct?

20 A. Correct.

21 Q. Back in 1984, is it your recollection, sir,
22 that emergency relief vents were covered -- and
23 stacks were covered under a part of the regulations
24 that exempted emergency relief events from
25 permitting requirements?

1 A. Typically we exempted anything that dealt with
2 emergency situations. An emergency relief vent
3 would fit into that category. In '84 I can't quote
4 you exactly where in 201 it said that, but odds are
5 it was there.

6 Q. Okay. And that portion of the New York State
7 regulations regarding air permitting requirements
8 was substantially revised and changed in 1996. Is
9 that your recollection?

10 A. Yes, that's correct.

11 Q. And at that point the regulations divided
12 exempted activities from trivial activities, is
13 that correct?

14 A. Correct.

15 Q. And the issue of emergency relief vents or the
16 handling of emergency relief vents under the
17 regulations was actually moved under the trivial
18 activities definition in Section 201 of the
19 regulations, correct?

20 A. Correct.

21 Q. All right. And that portion of the New York
22 regulations now regarding emergency relief vents
23 lists out approximately 94 separate activities that
24 are determined to be trivial activities under the
25 regulations, correct?

1 A. Correct.

2 Q. And it was your recollection, I believe in your
3 testimony on direct, that those definitions have
4 stayed substantially the same since 1996?

5 A. Yes.

6 Q. Those definitions -- I'm sorry -- regarding
7 emergency relief vents, correct?

8 A. Yes.

9 Q. Now, when an agency recognizes there is some
10 uncertainty or a lack of clarity in a regulation,
11 it will revise regulations or change them, as we've
12 just discussed in the 1996 amendments, correct?

13 A. Correct.

14 Q. Are you aware of an amendment to the definition
15 for trivial activities that New York State proposed
16 and published just last year, 2012, an amendment
17 regarding the definition of emergency relief vents?

18 A. No, I can't say I recall. They changed 201
19 quite frequently. You know, minor changes.

20 MR. MANGO: I'll wait for the next
21 question, your Honor.

22 MR. LINSIN: All right. Are you aware --
23 let's see if this helps your recollection. Are you
24 aware that there is a pending amendment?

25 MR. MANGO: Objection, your Honor. This